



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

4A The Smothers Family Living Trust 02-11-91 (Trust) Case No. 14CEPR00498

Atty Roberts, Gregory J., of Barrus and Roberts (for Petitioner Floyd Wyatt, Jr., Successor Trustee)
Atty Brawley, Mason L.; of Murphy & Brawley, Merced (for Objector Dianne S. Collins, Successor Trustee)

Petition for Order Confirming Successor Trustees and Trust Assets Belonging to the Marital Trust

Garnold DOD: 6/3/1991	FLOYD WYATT, JR. , son and Trustee of the MARITAL TRUST , [sub-trust of] the SMOTHERS FAMILY LIVING TRUST , is Petitioner. Petitioner states: <ul style="list-style-type: none">Petitioner became Trustee of the MARITAL TRUST pursuant to the deaths of the Settlor and Trustees of the SMOTHERS FAMILY LIVING TRUST established on 2/11/1991, GARNOLD GARTH SMOTHERS and VELMA L. SMOTHERS (Surviving Spouse); (copies of death certificates attached as Exhibit A; copy of Trust attached as Exhibit B1);On 2/11/1991, Settlor executed a Community Property Agreement relative to ownership of their assets (copy attached as Exhibit B2);Upon the death of the Deceased Spouse, the Trust was to be divided into sub-trusts: EXEMPTION TRUST and MARITAL TRUST; per Trust terms, the MARITAL TRUST is revocable by the Surviving Spouse [Velma];The Surviving Spouse amended the MARITAL TRUST by a First Amendment executed on 7/7/1997, a Second Amendment on 4/24/2001, a Fourth Amendment on 3/5/2009, and a Final Amendment on 2/11/1991 (copies of all amendments attached as Exhibits B3 to B6);Petitioner believes the Fourth amendment was incorrectly designated as "Fourth" and that it is the Third Amendment to the MARITAL TRUST; (also the Final Amendment bears the notarized signature of Surviving Spouse only as Trustee and the omission of her signature as Trustor is believed to be clerical error); <p style="text-align: center;">~Please see additional page~</p>	NEEDS/PROBLEMS/COMMENTS: Page 4B is the Status Hearing Re Settlement Agreement. Continued from 10/21/2014.
Velma DOD: 11/27/2013		
Cont. from 072314 082514, 102114		
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		Reviewed by: LEG
		Reviewed on: 11/26/14
		Updates:
		Recommendation:
		File 4A - Smothers

Petitioner states, continued:

- The division of the Trust into the **EXEMPTION TRUST** and **MARITAL TRUST** was done on a pro-rata basis rather than an item-by-item basis;
- The Surviving Spouse executed 3 separate Declarations of Trust Split: first on 6/25/1991, second on 9/23/1996, the last on 8/19/1998; however, although all 3 Declarations refer to Schedule A and B, there is only one Schedule A and Schedule B in existence among the Settlor's estate planning binders (*copies of the 3 Declarations and the only Schedule A and Schedule B attached as Exhibit C*);
- Schedules A and B indicate that the Settlor's residence on Childs Ave in Merced, which was designated in the Trust documents as the Deceased Spouse's separate property, was allocated **10%** to the **MARITAL TRUST** and **90%** to the **EXEMPTION TRUST**; pursuant to Trust terms, there was no physical segregation or division required except as necessary to make distribution as provided in the Trust;
- Surviving Spouse recorded Affidavits as to the residence and Deed of Trust, but never recorded a designation of either asset as belonging to the **MARITAL TRUST** or to the **EXEMPTION TRUST** (*copies of affidavits attached as Exhibit D*);
- Surviving Spouse sold the residence on Childs Ave. in Merced and purchased a new residence on San Gabriel Ave. in Fresno, and then transferred title to the new residence to herself as successor sole Trustee of the **SMOTHERS FAMILY LIVING TRUST** (*copy of transfer deed attached as Exhibit E*);
- Surviving Spouse may have used some of the proceeds from the sale of the Childs residence to purchase the new San Gabriel residence; however, Petitioner has not been able to determine what funds were used to purchase the new residence;
- Surviving Spouse lived 22 years after the death of Deceased Spouse, and was to receive principal distribution for support, education, care, health and maintenance from both the **MARITAL TRUST** and the **EXEMPTION TRUST**, and she also had the right to withdraw the greater of **\$5,000.00** or **5%** of the principal of the **EXEMPTION TRUST** each calendar year;
- Petitioner believes the Surviving Spouse over the period of 22 years withdrew more than **\$110,000.00** from the principal of the **EXEMPTION TRUST** such that at the time of her death, there were no longer any assets in the **EXEMPTION TRUST**;
- Upon the death of the Surviving Spouse, the last named Trustee of the **EXEMPTION TRUST** was **DIANNE S. COLLINS**, step-daughter of Velma (Surviving Spouse);
- On 1/30/2014, **DIANNE COLLINS** executed an Affidavit of Change of Trustee declaring she was the successor Trustee of the **SMOTHERS FAMILY LIVING TRUST**, and on the same day she executed a Grant Deed transferring title to the entire new residence on San Gabriel to the **EXEMPTION TRUST** (*copies attached as Exhibit F*);
- Petitioner believes that he (**FLOYD WYATT, JR.**) is the Successor Trustee of **SMOTHERS FAMILY LIVING TRUST** and that the new residence on San Gabriel was not and is not an asset of the **EXEMPTION TRUST**, and believes that the transfer of the new residence on San Gabriel was inappropriate in that, pursuant to the Division Schedules, the **MARITAL TRUST** owned at least **10%** of the residence and that the new residence on San Gabriel was purchased in part with the proceeds of the sale of the old residence on Childs and with her own funds in Trust A to complete the purchase of the new residence on San Gabriel;
- Petitioner believes that the majority if not all of the new residence on San Gabriel and the Deed of Trust are subject to his control as Trustee of the **MARITAL TRUST**;
- **DIANNE COLLINS** claims that the new residence on San Gabriel is **100%** owned by the **EXEMPTION TRUST** and that she is the Trustee of the **EXEMPTION TRUST**;

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Second Additional Page 4A, Smothers Family Living Trust Case No. 14CEPR00498

Petitioner states, continued:

- Petitioner has attempted to resolve the differences between the **MARITAL TRUST** and the **EXEMPTION TRUST** and offered to split the proceeds for the sale of the new residence on San Gabriel **50%** to the **MARITAL TRUST** and **50%** to the **EXEMPTION TRUST**, but this offer was rejected by **DIANNE COLLINS**;
- As Petitioner and **DIANNE COLLINS** cannot agree on the division of ownership of the new residence on San Gabriel, Petitioner is asking the Court to determine whether the new residence on San Gabriel is an asset of the **MARITAL TRUST** or the **EXEMPTION TRUST** or both;

Petitioner prays for an Order of the Court that:

1. The **MARITAL TRUST** of the **SMOTHERS FAMILY LIVING TRUST** is valid, and that the **EXEMPTION TRUST** of **SMOTHERS FAMILY LIVING TRUST** had no assets at the date of death of Surviving Spouse Velma L. Smothers on 11/27/2013;
2. **FLOYD WYATT, JR.** is confirmed as the Successor Trustee of the **MARITAL TRUST** of the **SMOTHERS FAMILY LIVING TRUST**; and
3. All of the real property on San Gabriel, and the Deed of Trust, are assets subject to the management and control of **FLOYD WYATT, JR.** as successor Trustee of the **MARITAL TRUST** of the **SMOTHERS FAMILY LIVING TRUST**.

Objection to Petition for Order Confirming Successor Trustees and Trust Assets Belonging to the Marital Trust filed by DIANNE S. COLLINS, step-daughter of Velma Smothers, on 7/11/2014 states:

- **GARNOLD GARTH SMOTHERS** and **VELMA L. SMOTHERS** married late in life, both having children from previous relationships;
- Although Garnold and Velma created their **SMOTHERS FAMILY LIVING TRUST** jointly, the Trust provides that upon the death of either of them, the Decedent's assets shall be allocated to the **EXEMPTION TRUST**, which is distributable to the Decedent's issue upon the death of the surviving spouse;
- This type of trust is common in second marriages where a couple wants the surviving spouse to be able to benefit from the trust assets during their remaining lifetime, but ensure that their assets ultimately pass to their children and issue;
- Garnold died ~4 months after creating the Trust, and the Trust was funded almost entirely with Garnold's separate property and all of those separate property assets, as well as all of his interest in he and Velma's community property, should have been allocated to an **EXEMPTION TRUST** – an irrevocable sub-trust which benefitted Velma for her lifetime, but which passed to Garnold's issue at Velma's death;
- Unfortunately, Velma failed to properly fund the **EXEMPTION TRUST** with Garnold's share of the Trust assets; Velma died on 11/27/2013, and Velma withdrew and spent all of the Trust assets except for a residence she purchased with **EXEMPTION TRUST** funds in 1998;
- Petitioner is now relying on Velmas' failure to fund the **EXEMPTION TRUST** to asset that Garnold's assets are assets of the **MARITAL TRUST**, and thus distributable to Petitioner and Velma's other children;
- This Court should deny Petitioner's requests and confirm that the [new residence on San Gabriel] is an asset of the **EXEMPTION TRUST**;

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Objection to Petition for Order Confirming Successor Trustees and Trust Assets filed by DIANNE S. COLLINS on 7/11/2014, continued:

- The Trust provides that upon Garnold's death, his separate property and all of his interest in Velma and his community property should have been allocated to the **EXEMPTION TRUST** (see *Exhibit B1 to the Petition*);
- As the Surviving Spouse, Velma's separate property and her interest in her community property should have been allocated to the **MARITAL TRUST**;
- The **EXEMPTION TRUST** became irrevocable on Garnold's death, and the **EXEMPTION TRUST** was to be held for the benefit of Velma during her lifetime, but at Velma's death the assets in the **EXEMPTION TRUST** are distributable to Garnold's issue (see *Exhibit B1 to the Petition*);
- On the other hand, the **MARITAL TRUST** continued to be revocable during Velma's lifetime; the Trust provided initially that any assets remaining in the **MARITAL TRUST** at the death of the surviving spouse shall be distributed to Garnold's issue;
- Velma and Garnold expressly disinherited Velma's children (see *Trust at Paragraph 8.14, page 17 of Exhibit B1 to the Petition*); [Note: Velma's children are **FLOYD WYATT, JR., LEONARD EUGENE WYATT, and DARRELL RAY WYATT**];
- However, Velma executed a series of amendments to the **MARITAL TRUST** which later included her children as beneficiaries;
- Respondent believes that following Garnold's death, Velma never provided a Notification of Trustee to Garnold's heirs, which was required pursuant to Probate Code § 16061.7;
- Upon Velma's death, Respondent became Trustee of the **EXEMPTION TRUST** (both other named successor trustees **ROBERT G. SMOTHERS** and **RONALD G. SMOTHERS**, Garnold's sons, are deceased);
- **The Bulk, if not all, of the Trust Assets were Garnold's Separate Property:** The primary Trust assets at the time of Garnold's death were (1) the real property on Childs Ave. in Merced, and (2) a Promissory Note dated 1/2/1985 owed to Garnold by his son and daughter-in-law; the property on Childs Ave. in Merced was Garnold's separate property and he transferred it to his Trust on 2/11/1991 by Quitclaim Deed; Petitioner failed to provide the Court with a copy of the Quitclaim Deed which clearly indicates that the real property on Childs Ave. in Merced was Garnold's separate property when he transferred it to the Trust (copy of Quitclaim Deed attached as *Exhibit A*); the Promissory Note was also Garnold's separate property (copy of Promissory Note and Substitution of Trustee and Full Reconveyance stating the lender was "Garnold Smothers, a married man, as his separate property" attached as *Exhibits B and C*);
- **Velma Failed to Properly Allocate the Trust Assets to the Sub-Trusts upon Garnold's Death:** In accordance with the terms of the Trust, as Garnold's separate property, 100% of the Merced Property and 100% of the Promissory Note should have been allocated to the Exemption Trust; the allocations schedules of sub-trusts submitted by Petitioner are inaccurate.
- **The Funds used to Purchase the Fresno [San Gabriel] Property came from Assets Owned by the EXEMPTION TRUST:** Velma sold the Merced Property for **\$129,500.00**, and failed to attach a copy of the 1998 Grant Deed for the Merced Property to the *Petition*; Velma used the proceeds from the sale to purchase real property on San Gabriel Ave in Fresno for **\$85,000.00**; it is unclear what Velma did with the remaining **\$45,000.00** proceeds from the sale; Velma initially acquired title in her name and subsequently transferred title to the Trust.

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- **Velma did not Exercise her Right of Withdrawal from the EXEMPTION TRUST:** Velma had a right to withdraw principal (limited to **\$5,000/5%** annually) from the Exemption Trust; Petitioner alleges Velma exercised her withdrawal right, but offers no factual basis or support for that allegation; Respondent alleges that Velma did not exercise the withdrawal power, and because it was not cumulative, it lapsed annually according to the terms of the Trust.

Respondent/Objector requests that the Court:

1. Deny Petitioner's request for an order that the property on San Gabriel in Fresno is an asset of the **MARITAL TRUST** under the **SMOTHERS FAMILY LIVING TRUST**;
2. Confirm that the real property on San Gabriel in Fresno is an asset of the **EXEMPTION TRUST** under the **SMOTHERS FAMILY LIVING TRUST** subject to the management and control of **DIANNE S. COLLINS**, Successor Trustee; and
3. Confirm that an property or funds traceable to the Promissory Note be confirmed as an asset of the **EXEMPTION TRUST** under the **SMOTHERS FAMILY LIVING TRUST**, subject to the management and control of **DIANNE S. COLLINS**, Successor Trustee.

Atty Roberts, Gregory J., of Barrus and Roberts (for Petitioner Floyd Wyatt, Jr., Successor Trustee)
Atty Brawley, Mason L.; of Murphy & Brawley, Merced (for Objector Dianne S. Collins, Successor Trustee)

Status Hearing Re: Settlement Agreement

Garnold DOD: 6/3/1991	<p>FLOYD WYATT, JR., son and Trustee of the MARITAL TRUST, [sub-trust of] the SMOTHERS FAMILY LIVING TRUST, filed a <i>Petition for Order Confirming Successor Trustees and Trust Assets Belonging to the Marital Trust</i> on 6/4/2014.</p> <p>DIANNE S. COLLINS, step-daughter of Velma Smothers, filed an <i>Objection to Petition for Order Confirming Successor Trustees and Trust Assets Belonging to the Marital Trust</i> on 7/11/2014.</p> <p>Minute Order dated 7/23/2014 from the hearing on the petition and objection states the Court sets the matter for Settlement Conference on 8/25/2014. Counsel is directed to submit their settlement conference statements along with a courtesy copy for the Court one week before the hearing.</p> <p>Minute Order dated 8/25/2014 from the Settlement Conference states the parties come to agreement. Mason Brawley will submit order. Matter set on 10/21/2014 for status hearing re: settlement agreement.</p> <p>Minute Order dated 10/21/2014 shows appearances by Attorneys Gregory Roberts and Mason Brawley, and that the matter is continued to 12/9/2014.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need settlement agreement.</p>				
Velma DOD: 11/27/2013						
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Aff.Sub.Wit.						
Verified						
Inventory						
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Not.Cred.						
Notice of Hrg						
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